

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LOUIS A. WYDO, JR. and KAREN  
M. WYDO,

Plaintiffs,

v.

NORTHWEST TRUSTEE  
SERVICES, INC.; STEPHEN  
ROUTH; GMAC MORTGAGE, LLC;  
ERIC A. FELDSTEIN; MERSCORP,  
INC.; BILL BECKMAN; SPOKANE  
COUNTY; and HOMECOMINGS  
FINANCIAL, LLC,

Defendants.

NO: 12-CV-0565-TOR

ORDER OF DISMISSAL WITHOUT  
PREJUDICE

BACKGROUND

On November 14, 2012, Defendants Northwest Trustee Services, Inc. and  
Stephan Routh filed a Motion to Dismiss Plaintiffs' Complaint for failure to state a  
claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6). ECF  
No. 14. On November 29, 2012, Defendants GMAC Eric A. Feldstein, Merscorp,

1 Inc., and Bill Beckman filed a motion to join in and supplement the previously  
2 filed Motion to Dismiss. ECF No. 18. *Pro se* Plaintiffs filed no response to either  
3 motion. On January 4, 2013, the Court ordered Plaintiffs to show cause on or  
4 before February 4, 2013 as to why their case should not be dismissed for failure to  
5 comply with the Local Rules and failure to prosecute.

#### 6 DISCUSSION

7 It is well established that district courts have the authority to dismiss for  
8 failure to prosecute or to comply with court orders. *See* Fed. R. Civ. P. 41(b);  
9 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In determining whether  
10 to dismiss a case for failure to comply with a court order or failure to prosecute, the  
11 district court must weigh five factors including: “(1) the public’s interest in  
12 expeditious resolution of litigation, (2) the court’s need to manage its docket; (3)  
13 the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
14 cases on their merits; and (5) the availability of less drastic alternatives.” *Ferdik*,  
15 963 F.2d at 1260-61; *see also Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.  
16 1986).

17 While *pro se* pleadings are held to less stringent standards than those  
18 prepared by attorneys, *pro se* litigants in the ordinary civil case should not be  
19 treated more favorably than parties with attorneys of record. *See Jacobsen v. Filler*,  
20 790 F.2d 1362, 1364 (9th Cir. 1986). *Pro se* litigants must follow the rules of the

1 court in which he or she litigates. *Carter v. C.I.R.*, 784 F.2d 1006, 1008 (9th Cir.  
2 1986).

3 The Ninth Circuit has held that “[t]he public’s interest in expeditious  
4 resolution of litigation always favors dismissal.” *Yourish v. California Amplifier*,  
5 191 F.3d 983, 990 (9th Cir. 1999). Similarly, “[i]t is incumbent upon us to  
6 preserve the district courts’ power to manage their docket without being subject to  
7 the endless vexatious noncompliance of litigants ....” *Ferdik*, 963 F.2d at 1261. In  
8 the present action, the first two factors weigh in favor of dismissal. Plaintiffs have  
9 not filed a response to Defendants’ motions to dismiss, nor did they file a response  
10 to the Court’s Order to show cause. This lack of response by Plaintiff clearly  
11 suggests that Plaintiffs do not intend to litigate this case diligently, and ongoing  
12 delay would hinder the Court’s ability to manage its docket.

13 The third factor for the Court to weigh is the risk of prejudice to the  
14 Defendants. The Court must examine whether Plaintiff’s actions impaired the  
15 Defendants’ ability to go to trial or threatened to interfere with the rightful decision  
16 of the case. *Malone v. U.S. Postal Service*, 833 F.2d 128, 131 (9th Cir. 1987).  
17 “Limited delays and the prejudice to defendant from the pendency of a lawsuit are  
18 realities of the system that have to be accepted, provided the prejudice is not  
19 compounded by ‘unreasonable’ delays.” *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th  
20 Cir. 1984). The Court must also weigh whether prejudice is sufficient to support

1 dismissal with consideration of the strength of Plaintiff's excuse for default. *See*  
2 *Malone*, 833 F.2d at 131. In the instant case Plaintiffs have offered no excuse for  
3 their default. While this case has only been pending for four months, the complete  
4 lack of response by Plaintiffs is approaching an unreasonable delay. However,  
5 Plaintiffs lack of response this early in the proceedings has not impaired  
6 Defendant's ability to go to trial or threatened rightful decision of the case. For  
7 these reasons, this factor weighs slightly against dismissal.

8 The fourth factor for the Court to consider is the public policy favoring  
9 disposition of cases on their merits. The Ninth Circuit has repeatedly found that  
10 public policy favors disposition of cases on the merits, therefore, this factor weighs  
11 against dismissal. *See Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002);  
12 *Malone*, 833 F.2d at 133 n.2.

13 The fifth factor for the Court to consider is the availability of less drastic  
14 alternatives. *See U.S. v. Nat'l Med. Enter.*, 792 F.2d 906, 913 (9th Cir. 1986)(court  
15 must first consider the impact of the sanction and the adequacy of less drastic  
16 sanctions). "[C]ase law suggests that warning a plaintiff that failure to obey a  
17 court order will result in dismissal can suffice to meet the "consideration of  
18 alternatives" requirement." *Malone*, 833 F.2d at 132-33. This factor weighs in  
19 favor of dismissal. Plaintiffs were clearly instructed that they must show cause as  
20 to why their case should not be dismissed. They were given thirty additional days

1 to show cause after their deadline to respond to Defendants' motions to dismiss.  
2 Plaintiffs complete lack of response to the pending motions to dismiss and the  
3 Court's subsequent Order to show cause demonstrates an unwillingness to  
4 participate in prosecuting this action.

5 After carefully weighing each of the factors, the Court finds that three out of  
6 the five weigh in favor of dismissal. Accordingly, the Court orders dismissal of  
7 this case without prejudice.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. All claims and causes of action in this matter are **DISMISSED** without  
10 prejudice.

11 2. All pending motions are **DENIED** as moot.

12 The District Court Executive is hereby directed to enter this Order and  
13 furnish copies to counsel and Plaintiffs at their last known address, and **CLOSE**  
14 the file.

15 **DATED** February 12, 2013.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge